	राजस्थान राजपत्र विशेषांक	RAJASTHAN GAZETTE Extraordinary
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भाग 5 (घ)

भारत के निर्वाचन आयोग की विज्ञप्तियां आदि।

(निर्वाचन विभाग)

अधिसूचना

जयपुर, अगस्त 03, 2021

संख्या एफ.4(1)(11)/निर्वा./2019/3739 :– भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या 82/राजस्थान–वि0स0/(5/2019)/2021 दिनांक 22 जुलाई, 2021 मय माननीय राजस्थान उच्च न्यायालय, जोधपुर के निर्णय दिनांक 31 मार्च, 2021 जिसमें (175) राजसमन्द विधानसभा निर्वाचन क्षेत्र की निर्वाचन अर्जी संख्या 5/2019 का निर्णय समाविष्ट है, को सर्वसाधारण के सूचनार्थ प्रकाशित किया जाता है।

प्रवीण गुप्ता,
प्रमुख शासन सचिव।

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली–110001

तारीख :– 22 जुलाई, 2021
31 आषाढ़, 1943 (शक)

अधिसूचना

सं0 82/राजस्थान–वि0स0/(5/2019)/2021 : लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, निर्वाचन अर्जी संख्या 5/2019–श्री जितेन्द्र कुमार बनाम श्रीमती किरण माहेश्वरी एवं अन्य में राजस्थान उच्च न्यायालय (जोधपुर बैंच) के तारीख 31 मार्च, 2021 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

राहुल शर्मा
प्रधान सचिव
भारत निर्वाचन आयोग

SECRETARIAT OF THE
ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.

Dated:- 22nd July, 2021
31 Ashadha, 1943 (SAKA)

NOTIFICATION

No. 82/RJ-LA/(5/2019)/2021/:- In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951) the Election Commission of India hereby

publishes judgment dated 31.03.2021 of the High Court of Rajasthan (Jodhpur Bench) in S.B. Election Petition No. 5 of 2019- Sh. Jitendra Kumar Vs. Smt. Kiran Maheshwari and ors.

By order,

RAHUL SHARMA,
PRINCIPAL SECRETARY,
ELECTION COMMISSION OF INDIA.

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S. B. Election Petition No. 5/2019

Jitendra Kumar S/o Shri Nanuram Ji Khatik, aged about 42 years, R/o Kumariyakheda, Post Namana, Tehsil Nathdwara, District Rajsamand. (Raj.)

----Petitioner

Versus

1. Smt. Kiran Maheshwari W/o Dr. Satyanarayan Maheshwari, (Legislative Assembly Election Candidate 2018 Constituency Area 175) / Member of Legislative Assembly (M.L.A.) Rajsamand, R/o Rana Rajsingh Nagar - 100 Feet Road, Rajsamand, Tehsil and District Rajsamand (Raj.) 313324.
2. Narayan Singh Bhati S/o Devi Singh Bhati, R/o Tejpura, Post Rajyawas, Tehsil and District Rajsamand (Raj.) Candidate of Indian National Congress Party, Legislative Constituency Rajsamand (Raj.).
3. Laxman Lal Sanwariya, R/o Khatik Mohalla, Kelwa, District Rajsamand (Raj.) Candidate of Bahujan Samaj Party, Legislative Constituency Rajsamand (Raj.).
4. Pankaj Kumar Vyas, R/o Village and Post Jeetawas, Tehsil Railmagra, District Rajsamand (Raj.) Candidate of Rashtriya Loktantrik Party, Legislative Constituency Rajsamand (Raj.).
5. Prakash Chandra Jain, R/o Nai Abadi, Kankroli, Rajsamand (Raj.) Candidate of Rashtriya Aam Aadmi Party, Legislative Constituency Rajsamand (Raj.).
6. Manoj Kumar, R/o Shivalay Mahadev Colony, Jal Chakki, Kankroli, Tehsil and District Rajsamand (Raj.) Candidate of Shiv Sena, Legislative Constituency Rajsamand (Raj.).
7. Mukesh Kumar Kumawat, R/o Paneluatan Complex, Ward No. 19 Kankroli Tehsil and District Rajsamand (Raj.) Candidate of Bharat Vahini Party, Legislative Constituency Rajsamand (Raj.).
8. Sambhu Prajapat, R/o Kali Magri, Kachchi Basti, Bhuwana, Udaipur (Raj.) Candidate of Bharatiya Jan Kranti Dal (Democratic), Legislative Constituency Rajsamand (Raj.).

9. Dinesh Chandra Kumawat, R/o Village Barliya, Post Pipli Acharyan, Tehsil and District Rajsamand (Raj.) Candidate of Independent Party, Legislative Constituency Rajsamand (Raj.).
10. Harish Singh Thakur, R/o Near Swastik Cinema, Street No. 4, Station Road Kankroli, Rajsamand (Raj.) Candidate of Independent Legislative Constituency Rajsamand (Raj.).
11. The District Election Officer – cum - District Collector, Rajsamand, Tehsil and District Rajsamand (Raj.).
12. The Returning Officer, Legislative Assembly Election Rajsamand - 2018, Rajsamand, Tehsil and District Rajsamand (Raj.).
13. The Chief Election Commissioner, Election Commission, Government of Rajasthan, Jaipur (Raj.).

----Respondents

For Petitioner(s)	:	Mr. Jitendra Kumar Khatik, the petitioner is present in person
For Respondent(s)	:	Mr. Sunil Beniwal, A.A.G. assisted by Mr. Kunal Upadhyaya & Mr. Karan Bishnoi

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HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

Judgment Reserved on March 19th 2021
Judgment Pronounced on March, 31st, 2021

With the consent of the parties, the present election petition is being heard finally and decided.

The present election petition has been preferred under Section 80(A) and 125(A) of the Representation of the People Act, 1951 by the election-petitioner, whereby a challenge was made to the election of respondent No. 1 – Smt. Kiran Maheshwari as Member of Legislative Assembly (M.L.A.) of Rajsamand Constituency (175) in pursuance to the Legislative Assembly Election – 2018.

The result of the election of Legislative Assembly Elections – 2018 was declared on 13.12.2018, whereby the respondent No. 1– Smt. Kiran Maheshwari was declared elected as Member of Legislative Assembly (M.L.A.) of Rajsamand Constituency (175). Aggrieved of the same, the present election petition was filed by the election-petitioner before this Court on 24.01.2019. At the time of presentation of the election petition, certain defects were pointed out by the Office, which were removed by the election petitioner subsequently. The notices in the election petition were issued by this Court on 28.08.2019. During the pendency of the present election petition, following Interlocutory Applications (IAs) were filed by the parties as under :-

I.A. filed by petitioner		
IA No	**Date**	**Details of application**
	5th September 2020	Letter Application – Calling in question election of Smt Kiran Maheshwari. For dismissal of application U/O 7 Rule 11 CPC and closure of reply of Respondent No. 1 as the time provided for the same was till 27/09/2019 but more than 90 days have passed**.**
01/2021	5th January, 2021	Application under Sec 151 CPC for disposal of the election petition and declaring the petitioner as elected for next five years on account of death of respondent No.1
	8th March, 2021	Application under Sec. 151 CPC for disposal of the election petition and declaring the petitioner/ respondent No 2 (Shri Narayan Singh Bhati) as elected member of legislative assembly of Rajsamand
IA filed by the respondents		
1/2019	26th Feb, 2019	Returning officer cum SDO, Rajsamand filed an application under O 1 R 10(2) CPC for impleadment as party and releasing the EVMs andVVPATS machines. (Decided vide Order dated 22/04/2019 vide which the application to the extent of impleadment of the applicant as party respondent was dismissed as not pressed while directing to release the VVPAT)
1/2020	28th Jan, 2020	By respondent No 1 – Shri Kiran Maheshwari Application under O 7 R 11 r/w Section 33 of the Representation of the People Act, 1951for dismissal of the election petition.
2/2020	1st October, 2020	Application for deleting respondent Nos. 11, 12 and 13 from the array of respondents
03/2020	16th December, 2020	Application on behalf of respondent – election commission under sec 151 CPC for disposal of the election petition and bringing on record - 1. Death of Smt. Kiran Maheshwari on 30th November, 2020 2. Notification dt. 02.12.2020 declaring Legislative Seat Rajsamand (175) as vacant
02/2021	12th Feb, 2021	Application under Sec 151 CPC for dismissal of the election petition on account of non- compliance of Section 117 of the Act of 1951

During the pendency of the present election petition, respondent No. 1 – Smt. Kiran Maheshwari passed away on 30.11.2020. Accordingly, a Notification dated 02.12.2020 declaring the seat of Rajsamand Constituency as vacant was published, which was placed on record by the respondent - State.

The petitioner, who was present in person in the Court, reiterated the contentions as raised in the election petition and vehemently submitted that the respondent No. 1 concealed the correct information about pendency of criminal cases against her and therefore, her nomination form should have been rejected by the Returning Officer. He further submitted that he moved an application to this effect before the Returning Officer but no order was passed even on that application also. The pith and substance of entire arguments of the election-petitioner is that despite there being a number of criminal cases pending against the respondent No. 1, the details of which was already mentioned in the election petition, her nomination form was not rejected and she was allowed to contest the election. The election-petitioner further contended that the respondent Nos. 11 to 13 have already preferred an application (IA No. 02/2020) for deleting their names from the array of the respondents, therefore, any contention raised on behalf of them should not be entertained. He contended that once an application for deleting the names of party respondents has been preferred, it should be deemed that for all intents and purposes, they are not party respondents in the present case and therefore, the Court should not hear the submissions made on their behalf. It was argued that since nomination form of the respondent No. 2 was also wrongly accepted by the Returning Officer, thus, he filed objections against the same but the said objections were not decided and the respondent No. 2 was also allowed to contest the election. He further submitted that he gave notice to all the respondents herein but none of them have filed any reply to the notice given by him. The election-petitioner contended that since no reply was filed by any of the respondents to the election petition, therefore, the contentions raised by him in the present election petition remain uncontested and should be accepted as it is and since the election petition is not being opposed by anybody, therefore, the prayer made in the present election petition should be accepted by this Court.

During pendency of the election petition, the election- petitioner filed certain documents to show that he is holding certain positions in the organizations like Akhil Bhartiya Khatik Samaj, Bhartiya Janta Party etc. Besides, he also placed on record certain other documents to show that he is involved in the welfare of the people at large in the local area and is deeply involved in the social work for the benefit of persons of his community as well as general public at large. He submitted that had the nomination form of the respondent No. 1 been rejected by the Returning Officer, all those votes which were casted in favour of the respondent No. 1 would have been received by him by virtue of holding number of positions including some position in the Bhartiya Janta Party. He further submitted that number of persons who belong to the caste of the election-petitioner would have also voted in his favour if the nomination forms of the respondent Nos. 1 and 2 were rejected and the election-petitioner would have easily been declared elected on the Rajsamand Seat of Legislative Assembly Election – 2018.

On a pointed query being made by this Court to the election- petitioner, he admitted the fact that at the time of presentation of the election petition on 24.01.2019, certain defects were pointed out by the Registry. During the pendency of the election petition, the said defects, particularly the defect No. 12 pointed out by the office with respect to non-deposit of requisite security amount of Rs. 2,000/- for the cost of the election petition as mandated under Section 117 of the Representation of People Act, 1951, was removed as noted by the office on 21.05.2019. The election- petitioner submitted that this Court granted time for removing the defects pointed out by the office on 04.04.2019, therefore, the defect of non-deposit of the security amount of Rs. 2,000/- cannotbe treated to be fatal in the present case.

The election-petitioner also filed written submissions which are almost on the same lines as stated by him during the courseof arguments.

Reliance was placed by the election-petitioner upon the judgment of Hon'ble Patna High Court in the case of **Ganga Mishra Vs. Chhedi Paswan and ors**. reported in **2016(3) PLJR 694**, wherein the High Court declared the election of Lok Sabha Seat as void on the ground that requisite information with respect to the pendency of the criminal cases was suppressed while filling the nomination form. The election-petitioner also placed reliance upon a news-paper report published in the "Rajasthan Patrika" dated 14.02.2019 wherein the judgment of Hon'ble Madras High Court at Madurai Bench was cited on the same proposition, but on asking to supply the copy of the said judgment, the election petitioner submitted that he is not in a position to have a copy of the said judgment.

Per contra, Mr. Sunil Beniwal, learned Additional Advocate General appearing on behalf of the respondent Nos. 11 to 13 submitted that vide Order dated 22.04.2019, the application (IA No. 01/2019) preferred by Shri Suresh Kumar Khatik, the Returning Officer – cum – Sub-Divisional Officer for impleading him as party respondent was dismissed as not pressed, however, the election-petitioner himself arrayed respondent Nos. 11 to 13 as party respondents in the election petition and no order was passed by this Court on the application for deleting their names from the array of the respondents so far. He further submitted that vide Order dated 29.01.2021, the fact of death of the returned candidate, namely, Smt. Kiran Maheshwari was taken note of. He submitted that the election-petitioner cannot be declared elected as M.L.A. of Rajsamand Constituency (175) in view of provisions of Section 101 of the Act of 1951 as declaration of the election-petitioner as duly elected can only be made if the election-petitioner or such other candidate received a majority of the valid votes or but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes. He further submitted that since there were more than two candidates, therefore, even in those circumstances, it cannot be presumed that the votes casted in favour of the returned candidate would have been received by the election-petitioner.

Mr. Beniwal, learned A.A.G. further submitted that the admitted position in the present case which emerges from the record of the election petition is that the election petition was preferred by the election-petitioner on 24.01.2019. At the time of presentation of the election petition, as per the defects so pointed out by the office, the election petition was not accompanied by the security amount for the cost of petition as mandated under Section 117 of the Act of 1951. The said defect was removed as per the office report dated 21.05.2019. He submitted that even if the time was granted by this Court to remove the defects, the inherent defect of non-deposit of the security amount for the cost of the petition will not come to rescue of the election-petitioner in this case. He submitted that the present election petition is liable to be dismissed in view of the provisions of Section 86 of the Act of 1951, whereby it is mandated that "The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117." He contended that as per Section 117 of the Act of 1951, it is clear that "at the time of presenting an election petition", the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition. He argued that since the election petition filed on 24.01.2019 was not accompanied by the security cost of Rs. 2,000/-, the same should be dismissed on this ground alone. He also argued that even the time granted by this Court for removal of the defects and thereafter,

issuance of notices in the election petition will not cure the inherent defect. The provisions of the Act of 1951 are required to be adhered to in the strict sense.

Learned A.A.G. relied upon the judgment of this Court in the case of **Mohan Raj Vs. Surendra Kumar Taparia and others** reported in **AIR 1968 Rajasthan 287** which was affirmed by the Hon'ble Supreme Court in the case of **Mohan Raj Vs. Surendra Kumar Taparia and others** reported in **AIR 1969 SC 677**. He also relied upon the judgment of Hon'ble Supreme Court in the case of **Sri Muniraju Gowda P.M. Vs. Shri Munirathna & ors. [Special Leave Petition (Civil) Nos. 6787-6788 of 2020] decided on 13.10.2020** as well as decision of the Coordinate Bench of this Court in the case of **Jitendra Kumar Vs. Smt. Diya Kumari & ors. (S.B. Election Petition No. 7/2019) decided on 24.01.2020**.

Learned counsel for the respondents also submitted that the right to contest election is neither a fundamental right nor a common law right. It is a statutory right created by the statute, therefore, each and every provision of statute is required to be adhered to in its strict sense. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in the case of **Jyoti Basu and ors. Vs. Debi Ghosal and ors.** reported in **AIR 1982 SC 983.**

I have considered the rival submissions made at the Bar and gone through the relevant record of the case as well as judgments cited by the parties.

The admitted facts which emerges from the record of the case in the instant election petition, are as under :-

A. The elections of the Rajasthan Legislative Assembly for Rajsamand Constituency (175) was conducted in the year 2018. The result of the election was declared on 13.12.2018, in which the respondent No. 1 – Smt. Kiran Maheshwari was elected as Member of Legislative Assembly (M.L.A.) of Rajsamand Constituency (175).

B. Aggrieved by same, the present election petition was preferred by the election-petitioner before this Court on 24.01.2019. At the time of presentation of the election petition, it was not accompanied by the security amount of Rs. 2,000/- for the cost of petition as mandated under Section 117 of the Act of 1951.

C. During the pendency of the present election petition, the returned candidate – Smt. Kiran Maheshwari (respondent No. 1 herein) passed away on 30.11.2020.

D. A notification on account of death of Smt. Kiran Maheshwari was published on 02.12.2020 declaring the seat of Rajsamand Constituency as vacant.

E. The entire pleadings of the election-petitioner in the present election petition are with respect to information regarding pendency of the criminal cases having not been mentioned by the respondent No. 1 at the time of filling nomination form and in one paragraph, it is also mentioned that while accepting the nomination form of the respondent No. 2, the Returning Officer did not act fairly.

F. There are no pleadings in the entire election petition with respect to the grounds mentioned in Section 101 of the Act of 1951 as there are no facts mentioned with respect to the election-petitioner having received a majority of the valid votes or that but for the votes obtained by the returned candidate by corrupt practices, the petitioner or such other candidate would have obtained a majority of

the valid votes.

It will be worthwhile to reproduce the prayers sought by the election petitioner in the present election petition, which read as under :-

> *"It is, therefore, most respectfully prayed on behalf of the petitioner that the election petition may kindly be allowed and :-*
>
> *I. The nomination of respondents No. 1 and 2 may kindly be cancelled;*
>
> *II. The respondent No. 2 may kindly be banned for contesting election for next six years.*
>
> *III. The election of respondent No. 1 Smt. Kiran Maheshwari on the post of Member of Legislative Assembly for Rajsamand constituency in pursuance to Legislative Assembly Election-2018 may kindly be declared void and the petitioner may kindly be declared elected Member of Legislative Assembly of Rajsamand Constituency for the next five years.*
>
> *IV. The competent authority may kindly be directed to take legal action against the respondent No. 1.*
>
> *V. Any other order which this Hon'ble Court deems fit may kindly be passed in favour of the petitioner.*
>
> *VI. Costs of the election petition may kindly be awarded to the petitioner."*

In view of the prayers mentioned above coupled with the factum of death of the returned candidate Smt. Kiran Maheshwari, except the prayer for declaring the election petitioner to be elected as Member of Legislative Assembly of Rajsamand Constituency for next five years, other prayers do not survive.

The election-petitioner preferred an application under Section 151 of CPC (IA No. 01/2021) for disposal of the election petition and declaring the election-petitioner / respondent No 2 (Shri Narayan Singh Bhati) as elected member of legislative assembly of Rajsamand on 08.03.2021. The same is liable to be rejected as prayer for electing the respondent No. 2 is contrary to the prayer made in the election petition.

The letter/application dated 05.09.2020 preferred on behalf of the election-petitioner with respect to dismissal of the application preferred by the respondent No. 1 under Order 7 Rule 11 of C.P.C. is of no consequence as the respondent No. 1 had passed away.

The other applications preferred by the election-petitioner are with respect to declaring him as elected Member of Legislative Assembly of Rajsamand Constituency on account of death of Smt. Kiran Maheshwari, the respondent No. 1 herein.

The respondent - State also preferred the misc. application being IA No. 02/2021, whereby the fact of death of the respondent No. 1 was brought to the notice of this Court and a notification dated 02.12.2020 declaring the Rajsamand Seat to be vacant was placed on record. In the said application (IA No. 02/2021), it was prayed that the present election petition may be dismissed on account of failure to deposit the security amount of Rs. 2,000/- for the cost of the petition as mandated under Section 117 of the Act of 1951.

A close look at the prayer made in the election petition shows that the only question which requires adjudication by this Court is as to whether the election

petitioner can be declared as elected on the post of Member of Legislative Assembly for Rajsamand Constituency on account of death of the respondent No. 1 or not. Since the prayer in the election petition is only with respect to declaration of election of the respondent No. 1 as void on the ground of suppressing the material facts in the nomination form and since the respondent No. 1 passed away, therefore, the aforesaid question does not require any adjudication by this Court on this subject.

The array of respondents in the election petition shows that there were more than one candidates who contested the elections along with the election petitioner for the Legislative Assembly Constituency No. 175 of District Rajsamand. Naturally, the other contestants might have received number of votes and were hopeful of getting elected. The election-petitioner received 263 votes out of total 162887 votes and stood at Serial No. 7 amongst total 11 contestants in the said election. Even, the election-petitioner did not receive 1/6th of the total votes, thus, his security amount was also forfeited. The contention of the election- petitioner that on account of death of Smt. Kiran Maheshwari, he should be declared as elected is, therefore, unfounded. It cannot be presumed that on account of death of the returned candidate – Smt. Kiran Maheshwari, the election petitioner secured a right of getting elected as Member of Legislative Assembly for Rajsamand Constituency.

Looked at from another angle, merely because the election- petitioner is holding number of positions in the different institutions / political parties, it would not be sufficient to declare him as elected on the said seat. The law prescribes certain grounds, on which a candidate other than the returned candidate can be declared to have been elected as provided under Section 101 of the Act of 1951. The same is reproduced as under :-

> *"**101. Grounds for which a candidate other than the returned candidate may be declared to have been elected**.— If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and 2[the High Court] is of opinion—*
>
> *(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or*
>
> *(b) that but for the votes obtained by the returned candidate by corrupt 8* * * practices the petitioner or such other candidate would have obtained a majority of the valid votes,*
>
> *2[the High Court] shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."*

The election-petitioner failed to substantiate his arguments as per provisions of sub-section (a) & (b) of Section 101 of the Act of 1951. Not only this, there are no pleadings to this effect in the election petition as well. The only point or contention raised in the election petition is with respect to the suppression of the information regarding criminal cases pending against the respondent No. 1 in the nomination form. Since there were more than one candidate, who contested the

Legislative Assembly Elections – 2018 for Rajsamand Constituency No. 175, it cannot be presumed that votes secured by the returned candidate would have been casted in favour of the election petitioner. Since the other candidates have also contested the election and more than two candidates were there, therefore, it cannot be presumed that in case of rejection of the nomination form of the returned candidate, those votes would have casted in favour of the electionpetitioner.

The Hon'ble Supreme Court in the case of **Chhedi Ram Vs. Jhilmit Ram and ors.** reported in **AIR 1984 SC 146** held as under :-

> *"The learned counsel for the respondents invited our attention to the decisions of this court in Vashist Narain Sharma v. Dev Chandra and Others(1), and Samant N. Balakrishna v. George Fernandez and Others, etc.(2) In Vashist Narain case, the difference between the number of votes secured by the successful candidate and the number of votes secured by the candidate who got the next largest number of votes was very nearly the same as the number of votes secured by the candidate whose nomination was improperly accepted. Unless it was possible to say that all the wasted votes would have gone to the candidate who secured the highest number of votes next to the successful candidate, it was not possible to hold that the result of the election had been materially affected. It was in those circumstances thatGhulam Hasan, J. observed:*
>
> *"But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many of which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand".*

The Hon'ble Supreme Court in the case of Sri Muniraju Gowda P.M. (supra) held in Para 21 & 22 of the judgment as under :-

> *"21. In **D.K. Sharma vs. Ram Sharan Yadav and Others**, this Court followed the dictum in **Vishwanatha Reddy***

(supra) to the effect that where there are more than two candidates in the field, it is not possible to apply the same ratio as could be applied when there are only two candidates. This principle was also reiterated in ***Prakash Khandre vs. Dr. Vijay Kumar Khandre and Others****, where this Court pointed out* ***"in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern."***

22. Therefore, apart from the fact that in the election petition, there were no pleadings of material facts co-relatable to the ingredients of clause (a) or (b) of Section 101 of the Act, to sustain prayer (c), even legally the High Court could not have granted prayer

(c) in view of the fact that there were 14 candidates in the fray."

An election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process. This Court is also of the opinion that even if there are two contestants and one of the contestant has received a very low percentage of votes and the nomination of the other candidate is challenged on various grounds, even then, in such situation, the candidate who has filed the election petition cannot be declared as elected only on the presumption that the votes casted in favour of the returned candidate would have been secured by the other candidate (who has filed the election petition) because no presumption can be drawn for the casting of the votes by the voters of that area. Election is the opinion expressed as will of the people to elect their leader and therefore, only the votes and votes alone should decide the fate of a candidate in the elections and no presumption can bedrawn by the Courts in such matters.

Coming back to the fact that the election petition was not accompanied by the security amount of Rs. 2000/- for cost of the petition as mandated under Section 117 of the Act of 1951, it is noted that at the time of filing the election petition on 24.01.2019, the amount of Rs. 2,000/- was not deposited by the election petitioner. A defect to this effect was, accordingly, pointed out by the office. On 04.04.2019, the time was granted by this Court to the election petitioner to remove the defects. Thereafter, the office reported about removal of the defect of non-deposit of the security amount of Rs. 2,000/- on 21.05.2019. The notices in the election petition were issued by this Court on 28.08.2019. It is an admitted fact that at the time of filing the present election petition, it was not accompanied by the requisite security amount of Rs. 2,000/-, which was an inherent defect. Thus, it is held that even if the time was granted by this Court for removing the defects and notices having been issued in the election petition, the inherent defect of non-deposit of requisite security amount for thecost of the petition will not be cured.

At this stage, it will be beneficial to reproduce Sections 86(1) & 117 of the Act of 1951. Section 86(1) ibid reads as under ;-

> *"**86. Trial of election petitions**.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.*
> *Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."*

Section 117 of the Act of 1951 reads as under ;-

> ***"117. Security for costs.**—(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition.*
> *(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costsas it may direct."*

A plain reading of Section 86(1) and Section 117 ibid shows that it is mandatory for an election-petitioner to deposit the security amount for the cost of the petition, failing which the consequence will be that, the election petition is liable to bedismissed on this ground alone.

The Hon'ble Supreme Court in ***Charan Lal Sahu Vs. Nandkishore Bhatt and ors.*** reported in ***AIR 1973 SC 2464*** held as under :-

> *"3. The right to challenge an election is a right provided by Article 329(b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.*
> *The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. this Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.*
>
> *In N.P. Ponnuswami v. Returning Officer, Namekkal Constituency and Ors. it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own*

members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

5.....

6. We are clearly of the view that the non-deposit of the security along with the election petition as required under Section 117 of the Act leaves no option to the Court but to reject it. The appeal is accordingly dismissed with costs."

[Emphasis supplied]"

Relying on the above referred judgment, the Hon'ble Supreme Court in ***Aeltemesh Rein Vs. Chandulal Chandrakar & ors.*** reported in ***AIR 1981 SC 1199***, held as under:

"The only question which survives is as to what is the consequence of non-compliance with Section 117 of the Act. That question has been settled by the decision of this Court in Charan Lal Sahu v. Nand Kishore Bhatt and ors. wherein it was held that the High Court has no option but to reject an election petition which is not accompanied by the payment of security amount as provided ins. 117 of the Act. Section 86(1) of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. In that view of the matter, the High Court was right in dismissing the election petition summarily."

In ***M. Karunanidhi vs. H.V. Hande and ors.*** reported in ***AIR 1983 SC 558***, the Hon'ble Supreme Court held as under :-

"The submissions advanced by learned Counsel for the appellant cannot be accepted as they proceed on the assumption that no distinction can be drawn between the requirement as to the making of a deposit in the High Court under Sub-section (1) of Section 117 and the manner of making such deposit. There was considerable emphasis laid by learned Counsel that Sub-section (1) of Section 117 cannot be dissected into two parts, one part being treated as mandatory and the other as directory. The contention is wholly misconceived and indeed runs counter to several decisions of this Court. It is always important to bear the distinction between the mandatory and directory provisions of a statute. Sub-section (1) of Section 117 is in two parts. The first part of Sub-section (1) of Section 117 provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court a sum of Rs. 2000/- as security for the costs of the petition, and the second is that

such deposit shall be made in the High Court in accordance with the rules of the High Court. The requirement regarding the making of a security deposit of Rs. 2000/- in the High Court is mandatory, the non-compliance of which must entail dismissal in limine of the election petition under Sub-section (1) of Section 86 of the Act."

The same view has also been reiterated by the Coordinate Bench of this Court in the case of Jitendra Kumar (supra) wherein the present petitioner was also the election petitioner in that case.

So far as the argument of the election-petitioner that the respondent Nos. 11 to 13 should not be permitted to participate in the proceedings of election petition as they have preferred an application for deletion of their names is concerned, it is noted that no order on that application was passed by this Court and since the election-petitioner himself arrayed the respondent Nos.11 to 13 as party respondents in the present election petition, therefore, they cannot be restrained from participating in theproceedings before this Court.

So far as the judgment of Hon'ble Patna High Court relied upon by the election-petitioner is concerned, the same has no application in the facts of the present case as the returned candidate i.e. respondent No. 1 – Smt. Kiran Maheshwari has passed away and therefore, no deliberations can be done on the contention raised by the election-petitioner with respect to non- disclosure of information regarding pendency of criminal cases by the respondent No. 1 in her nomination form.

As far as the contention of the petitioner that no reply to the notice given by him and no reply to the election petition has been filed by the respondents is concerned, the same is noted to be rejected in view of the discussions made in the preceding paras.

Similarly, the positions held by the election-petitioner in the different organizations including the political party will not suo motu make him eligible to be elected as Member of Legislative Assembly for Rajsamand Constituency on account of death of the respondent No. 1. The guess work is not possible as there is no foundation to presume the fact that the persons belonging to the community of the election-petitioner would cast their votes in his favour. Although, the election-petitioner while submitting the written submissions stated that he is holding the number of positions in the organizations and political parties but the same will not entitle him for getting elected without contesting the elections and getting the requisite votes for being declared as winning candidate. It is actually the will of the people which is expressed by them by casting their votes in favour of the candidate and therefore, even if a person is holding the number of positions and is a social worker, it cannot be presumed that the people will elect him as a Member of Legislative Assembly.

In view of the above discussion, it is clear that the prayer sought for by the election-petitioner in the present election petition cannot be accepted and therefore, the election petition being bereft of any merit is dismissed accordingly.

The substance of this decision shall be intimated to the Speaker of the Legislative Assembly as well as the Election Commission forthwith. A copy of this judgment shall be sent to the Election Commission as provided under Section 103 of the Act of 1951.

(VINIT KUMAR MATHUR),J

1-Inder/-

By order,

RAHUL SHARMA,
PRINCIPAL SECRETARY,
ELECTION COMMISSION OF INDIA.

राज्य केन्द्रीय मुद्रणालय, जयपुर ।